

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT 10 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | | |
|-----------------------|---|----------------------------|
| THE STATE OF ARIZONA, |) | 2 CA-CR 2012-0223-PR |
| |) | DEPARTMENT B |
| Respondent, |) | |
| |) | <u>MEMORANDUM DECISION</u> |
| v. |) | Not for Publication |
| |) | Rule 111, Rules of |
| JUAN CARLOS SAUCEDO, |) | the Supreme Court |
| |) | |
| Petitioner. |) | |
| _____ |) | |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200500189

Honorable Wallace R. Hoggatt, Judge

REVIEW GRANTED; RELIEF DENIED

Malanga Law Office
By Rafael Malanga

Bisbee
Attorneys for Petitioner

ESPINOSA, Judge.

¶1 Following a jury trial, petitioner Juan Saucedo was convicted of unlawful flight and two counts of aggravated assault of a peace officer. The trial court sentenced him to consecutive, presumptive prison terms totaling 22.5 years. We affirmed Saucedo’s convictions and sentences on appeal. *State v. Saucedo*, No. 2 CA-CR 2005-0334 (memorandum decision filed March 14, 2008). Saucedo then sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., claiming trial counsel had rendered ineffective assistance. The court conducted a two-day evidentiary hearing, after which it dismissed the petition and subsequently denied Saucedo’s motion for rehearing.¹ This petition for review followed. We will not disturb a court’s ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no such abuse here.

¶2 Saucedo presents two claims of ineffective assistance of trial counsel: (1) counsel failed to communicate or explain to him the state’s plea offer, or to show him the actual agreement; and (2) counsel improperly advised Saucedo not to tell the author of the presentence report or the trial court that he was under duress when he committed the offenses, thereby preventing them from hearing relevant mitigating evidence. Saucedo asked the court to reinstate the plea offer² pursuant to *State v. Donald*, 198 Ariz. 406,

¹Although it is unclear if Saucedo seeks review only of the trial court’s dismissal of the petition for post-conviction relief or of its denial of the motion for rehearing as well, we assume the latter to be true.

²On review, Saucedo solely asks that “this court accept review and grant relief.”

¶¶ 14, 44, 10 P.3d 1193, 1200, 1205 (App. 2000).³ In order to prevail on a claim of ineffective assistance of counsel, a defendant must establish both that counsel’s performance fell below an objectively reasonable professional standard and that the deficient performance caused prejudice to the defense. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985).

¶3 In its nine-page decision and order dismissing the petition, the trial court first summarized the procedural history of the case and noted that it “ha[d] considered the entire file in this case—including all transcripts of the trial, pretrial hearings, and sentencing—as well as the evidence presented at the post-conviction relief hearing.” The court also articulated the correct standard for evaluating Saucedo’s claims of ineffective assistance of counsel, and addressed his claims under this standard. Based on the record before us, we cannot say the court abused its discretion in denying Saucedo’s petition for post-conviction relief. The court did so in a detailed and thorough ruling that clearly identified Saucedo’s arguments and correctly ruled on them in a manner that will allow any future court to understand their resolution. We therefore approve and adopt the court’s ruling and see no need to restate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 Additionally, to the extent Saucedo asks us to find fault with the trial court’s numerous credibility findings based on the exhibits and testimony presented at the

³It is undisputed the parties did not discuss the state’s plea offer on the record and that a hearing pursuant to *Donald*, 198 Ariz. 406, 10 P.3d 1193, did not take place before Saucedo’s trial.

evidentiary hearing, including the court's express finding that defense counsel was a more credible witness than Saucedo, we will not do so. In reviewing a trial court's ruling following an evidentiary hearing, we defer to its factual findings, *see State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993), mindful that the trial court "is in the best position to evaluate credibility and accuracy, as well as draw inferences, weigh, and balance" the evidence that was presented at the hearing, *State v. Bible*, 175 Ariz. 549, 609, 858 P.2d 1152, 1212 (1993). *See also State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988) (trial court sole arbiter of credibility of witnesses in Rule 32 evidentiary hearing). Consequently, we do not reweigh the evidence. *See State v. Rodriguez*, 205 Ariz. 392, ¶ 18, 71 P.3d 919, 924 (App. 2003). Rather, "[w]e examine a trial court's findings of fact after an evidentiary hearing to determine if they are clearly erroneous." *State v. Berryman*, 178 Ariz. 617, 620, 875 P.2d 850, 853 (App. 1994). And we view the evidence presented at the hearing in the light most favorable to sustaining the court's ruling. *Sasak*, 178 Ariz. at 186, 871 P.2d at 733.

¶5 Finally, to the extent Saucedo also claims the evidence of duress was not properly placed before the author of the presentence report or the sentencing court,⁴ we note that this information nonetheless was presented to the trial court in the post-conviction proceeding. And, having considered such evidence, the court expressly found it "insufficient . . . to allow [it] to find that the [sentencing] court would have imposed any lesser sentence had defendant presented duress evidence in mitigation or had spoken to the probation officer or at sentencing."

⁴Different judges presided over the sentencing and post-conviction proceedings.

¶6

Accordingly, the petition for review is granted but relief is denied.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge